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 Shopko Properties, LLC

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

LARRY I. NEWKIRK and RUTH A.)	
NEWKIRK,)	No. CV-08-273-FVS
)	
Plaintiff,)	PROTECTIVE ORDER
)	
vs.)	
)	
CONAGRA FOODS, INC., et al.,)	
)	
Defendant.)	
)	

This Protective Order (hereinafter "Order") is entered pursuant to FRCP 26(c). The parties have stipulated and agreed, and the Court recognizes, that the parties and non-party witnesses to this action may possess private, trade secret, and/or proprietary information, which is confidential or of competitive commercial value and may be subject to discovery in this action, but which should not be made available to competitors or to the public generally.

1 Accordingly, IT IS HEREBY ORDERED as follows:

2 A. CONFIDENTIAL Documents Defined.

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4 1. Documents or information produced or disclosed within any
5 proceeding, formal or informal, including but not limited to, written discovery,
6 depositions, affidavits, document production and expert disclosures, by any of the
7 parties to this action or by any non-party witness, which a party or witness
8 designates as "Confidential." For purposes of this Order, Confidential information
9 includes, but is not limited to, documents that contain trade secrets, proprietary or
10 sensitive information, employee records and personnel files, employee medical
11 records, and any other information subject to privacy rights. If discoverable,
12 employee records, personnel files and medical records may be marked
13 Confidential. By entering this agreement and defining Confidential information the
14 parties are not agreeing or stipulating that any specific documents are discoverable,
15 and reserve all rights and objections. Sales records, material safety data sheets,
16 safety precautions, and safety records are not generally deemed Confidential;
17 however, a producing party reserves the right to evaluate such documents and to
18 designate such documents or portions thereof should they contain Confidential or
19 Attorneys' Eyes Only information within. Confidential information shall be
20 revealed only to: (a) the Court, the Court's staff and any Court-appointed
21 mediators, arbitrators or expert witnesses; (b) the parties and their officers,
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1 employees, and agents who are providing assistance to counsel in this action
2 (including in-house counsel participating in the defense of this action), and any
3 persons joined as parties in the future; (c) the parties' attorneys of record and those
4 attorneys' associates, assistants, employees, and vendors; (d) consultants, technical
5 experts, expert witnesses, potential fact witnesses, and agents involved in the
6 preparation of this action who have signed the "Agreement to be Bound by
7 Protective Order" attached hereto as Exhibit A; (e) insurers or representatives of
8 the parties who have signed the "Agreement to be Bound by Protective Order"
9 attached hereto as Exhibit A; and (f) court reporters, their transcribers, assistants,
10 and employees.
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15 B. ATTORNEYS' EYES ONLY Documents Defined.

16 2. Documents or information produced or disclosed within any
17 proceeding, formal or informal, including but not limited to, written discovery,
18 depositions, affidavits, document production, and expert disclosures, by any of the
19 parties to this action or by any non-party witness, which are of a highly sensitive or
20 proprietary or trade secret nature, may be designated by the producing party or
21 witness as "ATTORNEYS' EYES ONLY." For purposes of this Order,
22 ATTORNEYS' EYES ONLY information includes, but is not limited to, product
23 formula information, non-public financial information, pricing information, and
24 customer lists. ATTORNEYS' EYES ONLY information shall be revealed only to
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1 (a) outside attorneys of record for a party to this litigation; (b) expert witnesses or
2 expert consultants assisting counsel of record who have signed the "Agreement to
3 be Bound by Protective Order" (attached hereto as Exhibit A); (c) deponents or
4 other fact witnesses, but only if that witness is not an employee of a competitor or
5 co-defendant of the producing party and has signed the "Agreement to be Bound
6 by Protective Order"; (d) the Court and its staff; and (e) court reporters, their
7 transcribers, assistants, and employees. ATTORNEYS' EYES ONLY documents
8 or information shall not be shown to employees of any competitors of the
9 producing party, nor shall such documents or information be disclosed or used in
10 any way that would allow such information to become known to employees of
11 competitors of the producing party.
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16 C. Use of CONFIDENTIAL and ATTORNEYS' EYES ONLY
17 Documents.
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19 3. The parties, counsel for the parties, and all other persons to whom
20 CONFIDENTIAL or ATTORNEYS' EYES ONLY documents or information is
21 disclosed in accordance with this Order shall use all such documents or
22 information solely for the purposes of case preparation and trial in butter flavoring
23 litigation. Such documents or information shall not be used in any other case
24 unless and until ATTORNEYS' EYES ONLY and CONFIDENTIAL protective
25 orders are in place with the same protections as are afforded in this case. In
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1 addition, if a party wishes to use in another action the documents produced by a
2 third party witness in this action the third party witness must be given notice and
3 no less than thirty (30) days to object to the use of any documents in other but
4 flavor litigation. Notice that such documents may be used in a specific case is
5 sufficient notification and the party need not give notice of each document and
6 each time that the documents will be used.
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9 4. Before disclosing CONFIDENTIAL or ATTORNEYS' EYES ONLY
10 documents or information in accordance with this Order to any person other than
11 the Court, court reporters, and their respective staff, counsel for the party seeking
12 to disclose such information shall obtain that person's signature to the "Agreement
13 to be Bound by Protective Order", attached hereto as Exhibit A. Such person shall
14 sign and date a copy of the "Agreement to be Bound by Protective Order,"
15 evidencing his or her agreement to be bound thereby. Such counsel shall maintain
16 all signed copies of the "Agreement to be Bound by Protective Order" until the
17 conclusion of this case, as defined below, and shall be required to provide a copy
18 of any signed "Agreement to be Bound by Protective Order" to the producing party
19 upon request.
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24 5. Written material submitted to the Court that contains, refers to or
25 reveals CONFIDENTIAL or ATTORNEYS' EYES ONLY information shall be
26 subject to this Order, and shall be filed under seal. Upon filing, the Clerk is
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1 directed to maintain such documents under seal and to make such documents
2 available only to the Court, Court personnel, and counsel for the parties to this
3 action. The parties shall file such CONFIDENTIAL or ATTORNEY'S EYES
4 ONLY information in sealed envelopes or other sealed containers which shall state
5 on the caption page, "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER"
6 or "ATTORNEY'S EYES ONLY -- HIGHLY CONFIDENTIAL: SUBJECT TO
7 ATTORNEYS' EYES ONLY PROTECTIVE ORDER." A party may file
8 CONFIDENTIAL or ATTORNEYS' EYES ONLY documents under seal in the
9 manner designated herein without the need to bring a separate motion asking the
10 Court to file such documents under seal.
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14 6. Depositions or portions thereof may be designated CONFIDENTIAL
15 or ATTORNEYS' EYES ONLY by informing the court reporter (and
16 videographer, if applicable) at the time of the deposition and/or within no later than
17 fifteen (15) days after the transcript has been provided to counsel. The court
18 reporter (and/or videographer) shall indicate that such designation was made and
19 shall stamp or mark the face of the transcript (and/or videotape) accordingly. All
20 depositions, deposition testimony and deposition exhibits containing
21 CONFIDENTIAL or ATTORNEYS' EYES ONLY information shall be deemed
22 confidential as designated until fifteen (15) days after receipt of the final transcript
23 from the court reporter by the producing party. If a deponent refuses to agree to
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1 sign the "Agreement to be Bound by Protective Order" attached hereto as Exhibit
2 A, disclosure of CONFIDENTIAL and/or ATTORNEYS' EYES ONLY
3 information during the deposition shall not constitute a waiver of confidentiality
4 and no copy of the transcript or exhibits containing the CONFIDENTIAL and/or
5 ATTORNEYS' EYES ONLY information shall be given to the deponent.
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8 7. In the event that any entity, person or party bound by this order having
9 possession, custody or control of any CONFIDENTIAL and/or ATTORNEYS'
10 EYES ONLY information receives a subpoena, other process or court order to
11 produce such CONFIDENTIAL and/or ATTORNEYS' EYES ONLY information
12 in any case, proceeding or forum, such entity, person or party shall notify the
13 attorneys of the Producing Party and furnish such attorneys with a copy of said
14 subpoena, other process or order as soon as reasonable practicable within the time
15 period for compliance with such subpoena, process or court order. The Producing
16 Party shall then have the burden of opposing such subpoena, process or order and
17 obtaining relief from compliance within the time period for compliance with the
18 subpoena, process or order if it wishes to prevent disclosure of the
19 CONFIDENTIAL and/or ATTORNEYS' EYES ONLY information. The
20 CONFIDENTIAL and/or ATTORNEYS' EYES ONLY information will be
21 maintained and not disclosed until after any final determination by a court of
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1 competent jurisdiction, including appeals, on any motion to quash or for protective
2 order that is filed.

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4 8. At the conclusion of this case (which shall be upon entry of a final
5 judgment in the last of any proceeding under the case number regardless of
6 whether an appeal is taken by any party), all CONFIDENTIAL or ATTORNEYS'
7 EYES ONLY information produced by any party and designated as subject to this
8 Order, including all copies, extracts and summaries thereof, shall be returned upon
9 request to *the* producing party within one hundred twenty (120) days after such
10 request is made. One copy of the returned documents shall be maintained by the
11 producing party. Attorney work product containing CONFIDENTIAL or
12 ATTORNEYS' EYES ONLY information may be destroyed instead of being
13 returned to the producing party, provided that counsel certifies in writing no later
14 than 30 days after the request of the producing party that such destruction has
15 occurred. Counsel in this matter are authorized to use these documents in other
16 flavor-related litigation and may produce same when a protective order providing
17 the same levels of protection is entered in such case(s). Counsel may retain
18 CONFIDENTIAL and ATTORNEYS' EYES ONLY information until the
19 conclusion of all flavor-related litigation in which they are counsel of record as
20 long as the party having provided that information in the instant litigation is also a
21 party to the other litigation. In such circumstances, a request for return of
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1 CONFIDENTIAL or ATTORNEYS' EYES ONLY information may be made by
2 the producing party at the conclusion of the other case(s), under the terms of this
3 Protective Order and/or any other applicable authority. Retained CONFIDENTIAL
4 and ATTORNEYS' EYES ONLY information may be shared among with other
5 counsel only if said counsel actively represents a party in butter flavoring litigation
6 and said counsel and/or their law firm has signed a protective order providing the
7 protections that are afforded in this case.
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10 D. Other Provisions Applicable to CONFIDENTIAL and ATTORNEYS'
11 EYES ONLY Documents.
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13 9. Any CONFIDENTIAL or ATTORNEYS' EYES ONLY information
14 that is inadvertently produced without the appropriate designation or other
15 identification as to its confidential nature may be designated as CONFIDENTIAL
16 or ATTORNEYS' EYES ONLY in writing within forty five (45) days of the date
17 of the original production of such information by the producing party.
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20 10. Should any CONFIDENTIAL or ATTORNEYS' EYES ONLY
21 information be inadvertently disclosed to any person not allowed access under the
22 terms and provisions of this order, then the disclosing party, promptly upon
23 becoming aware of such disclosure, shall (a) identify such person to the Producing
24 Party; (b) inform such person of all the provisions of this order; (c) request that
25 such person sign the "Agreement to be Bound by Protective Order" attached hereto
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1 as Exhibit A; and (d) use its best efforts to retrieve all CONFIDENTIAL and/or
2 ATTORNEYS' EYES ONLY information that the person was not authorized to
3 receive.
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5 11. The terms of this Order shall apply to documents or information
6 previously produced by any party or non-party in any butter flavoring litigation
7 and designated as subject to the protective orders in those cases.
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10 12. This Order may be construed or modified by the Court on its own
11 motion or on application of any of the parties to this action.
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13 13. Any party that challenges the designation of any documents or
14 information designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY may
15 apply to the Court for *in camera* review of the documents or information at issue
16 and for an order determining the application of this protective order to such
17 documents or information. Prior to making such application to the Court, the
18 challenging party shall meet and confer in good faith with the producing party in
19 an effort to resolve the dispute. The CONFIDENTIAL or ATTORNEYS' EYES
20 ONLY information shall retain its status as CONFIDENTIAL or ATTORNEYS'
21 EYES ONLY until such time as the Court enters an order otherwise and the time
22 for taking an interlocutory appeal from such order has expired.
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1 14. This order is entered for the purpose of facilitating the exchange of
2 documents and other materials without involving the Court unnecessarily in the
3 process. Nothing in this order, nor the production of any document or other
4 materials under the terms of this order, nor any proceedings pursuant to this order,
5 shall be deemed: (a) to have the effect of an admission or waiver by any party or
6 third party; (b) to alter the confidentiality or non-confidentiality of any such
7 document or other material; or (c) to alter any existing obligation of any party or
8 third party.
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11 15. The terms of this Order shall remain in effect after the conclusion of
12 this case, and this Court hereby retains jurisdiction to interpret and enforce this
13 Order pursuant to and under the Federal Rules of Civil Procedure following the
14 conclusion of this case. The parties, including all experts and other persons subject
15 to discovery in this action or who receive a copy of this Order, hereby consent to
16 the jurisdiction of this Court for the purpose of enforcement of this Order.
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19 16. In producing files and records for inspection, no marking of them as
20 CONFIDENTIAL and/or ATTORNEYS' EYES ONLY need be made by the
21 Producing Party in advance of the inspection. For purposes of the inspection, all
22 documents produced shall initially be deemed to be marked ATTORNEYS' EYES
23 ONLY. Following the inspecting party's selection of specified documents for
24 copying, the Producing Party shall mark any CONFIDENTIAL or ATTORNEYS'
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1 EYES ONLY documents in accordance with paragraphs A1 and A2 of this
2 protective order.
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4 E. PRIVILEGED DOCUMENTS

5 17. In the event that a document as to which a privilege from production
6 or disclosure is claimed (including but not limited to attorney-client privilege
7 and/or the work product doctrine) is inadvertently disclosed during document
8 inspection and/or copying, such inadvertent disclosure shall not constitute a waiver
9 of any privilege with respect to such document or any other documents, and such
10 document (and all copies made thereof) will be promptly returned to the Producing
11 Party upon demand.
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14 18. Production of documents on which there are notations indicating that
15 they were carbon copied or otherwise transmitted to in-house or outside attorneys
16 or claim representatives does not constitute a waiver of the attorney-client privilege
17 or work product immunity as to: (a) any other documents or communications; or
18 (b) any communications with any attorneys.
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21 DATED this 2nd day of February, 2009.
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23 s/ Fred Van Sickle
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25 United States District Judge
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Exhibit A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I have reviewed a copy of the Protective Order entered in the litigation known as *Larry Newkirk and Ruth Newkirk v. ConAgra Foods, Inc., et. al., Case No. CV-08-273-FVS* in the United States District Court, Eastern District of Washington. I understand the limitations this Protective Order imposes on the use and disclosure of documents and/or information designated as CONFIDENTIAL and/or ATTORNEYS' EYES ONLY. I agree to be bound by all of the terms of the Protective Order. I further understand that the unauthorized use or disclosure of documents and/or designated as CONFIDENTIAL and/or ATTORNEYS' EYES ONLY may constitute contempt of Court, and I hereby consent to the personal jurisdiction of the United States District Court, Eastern District of Washington, in connection with the use or disclosure of such information.

DATED this _____ day of _____, _____.

Print Name: _____

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